



DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

Main Justice Building
10th & Constitution Ave., NW
Washington, D.C. 20530
(202) 514-2401 / (202) 616-2645 (f)
antitrust@usdoj.gov (internet)
<http://www.usdoj.gov/atr> (World Wide Web)

March 23, 1994

Andrew N. Meyercord, Esquire
Looper, Reed, Mark & McGraw
4300 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201

Dear Mr. Meyercord:

This letter responds to your request on behalf of the Houston Health Care Coalition ("the Coalition") for a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intentions concerning the Coalition's proposal to form a Group Purchasing Association ("the Association"). Based on the information the Coalition has provided on June 9, 1993, as supplemented on September 23, 1993, November 10, 1993, December 3, 1993, and February 24, 1994, the Department does not presently intend to challenge the Association's proposed activities under the antitrust laws.

We understand that the Association will be formed as a non-profit corporation that will contract with health care providers for the delivery of health care services to the Association's members' employees and dependents at predetermined reimbursement amounts similar to the reimbursement methodology of Medicare's Diagnostic Related Group ("DRG") and Relative Value Schedule. The Association will operate in a 13-county area surrounding Houston: Austin, Brazoria, Colorado, Matagorda, Fort Bend, Galveston, Chambers, Harris, Liberty, Montgomery, Walker, Waller, and Wharton. Any person, business association or organization meeting the Association's membership criteria can join the Association upon paying a membership fee to cover developmental and operational costs.

Not all members of the Coalition will choose to belong to the Association. The Association's membership will be divided into associate members, which have principal business activities in the areas of health care services or insurance, and corporate members, which have other principal business activities. Associate members may also choose to contract with the Association as providers. Associate members may be involved in the Association's operations by serving on committees. They cannot, however, vote on any matters involving the Association's operations or be represented on the Board of Trustees, which will control the Association's activities. Furthermore, associate members will not take part in any decisions involving reimbursement rates.

Each member of the Association may decide to contract with a provider at the price negotiated by the Association or negotiate its own agreement with any provider, including providers contracting with the Association. Likewise, the providers are free to independently negotiate and contract with any purchasers of health care services, including members of the Association. Moreover, no Coalition member will be required to join the Association. Furthermore, the Association will have no control over individual members' design, implementation, or operation of their respective benefit packages. Finally, although some current Coalition members are direct competitors, the members' cost of purchasing health care benefits accounts for only a small percentage of the selling price of the products and services they provide.

To begin the Association's program, the Coalition will use a consultant to compile data from the providers regarding the costs associated with various DRGs. The consultant will survey average historical costs for various procedures at approximately 65 health care facilities in the 13-county area and then assemble a data base of prevailing charges for those DRGs available for program coverage. No provider will have access to the data submitted by any other provider. Furthermore, only Association members will have access to the data or study.

Based on this cost data (without specific provider identification) and any additional information about individual providers' unusual costs, the Association will develop a schedule of reimbursement rates. Then, the reimbursement rates will be distributed to the providers so they may decide whether to contract with the Association. The Association's Board of Trustees will have final approval of all reimbursement rates and contracts negotiated with the providers. Reimbursement rates, once established, would be effective for a one-year period, and adjusted annually thereafter.

The Coalition has represented that, in general, no more than 20 percent of any health care specialist-physician providers in any relevant market in which the Association operates will be associate members. (The only exception is for providers that are the sole providers of their specialty in the relevant market.) This limitation on specialty provider participation will significantly reduce any risk of provider collusion. Moreover, the Association has other safeguards against provider collusion. No provider that is also an associate member may take part in negotiating reimbursement rates or setting those rates on the Association's behalf. Nor may a provider participate in the selection or termination of health care providers contracting with the Association. In addition, providers will not have access to any specific cost data obtained by the Association from any other providers. Finally, each member will retain the unilateral right to negotiate its own agreements with any provider, including those contracting with the Association.

Based on the information you have provided, the Department has no present intention of challenging the Association's activities on antitrust grounds. The Association has the potential to create efficiencies in delivering health care services that could result in lower health care costs. To the extent that occurs, the formation and operation of the proposed purchasing group could be procompetitive. In accord with our normal practices, however, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if actual operation of any aspect of the program proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accord with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made available to the public immediately. Your supporting documents will be publicly available within 30 days of

the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General

Enclosure